

****NOT FOR PRINTED PUBLICATION****

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

WILLIAM LEE EISENHOUR

Plaintiff,

v.

STEVEN ZELLER et al.

Defendants.

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CIVIL ACTION No. 9-2-cv-62

JUDGE RON CLARK

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

The Report and Recommendation of the Magistrate Judge, which contains her findings, conclusions, and recommendation for the disposition of Defendants Tyler County, Texas, Steven Zeller, Roy James and Michael Rossi Carruth's Motion for Summary Judgment (document #23) has been presented for consideration. The Report and Recommendation recommends that the Motion for Summary Judgment be granted and that the claims against these defendants be dismissed with prejudice. Plaintiff filed written objections to the Report and Recommendation on June 5, 2013. A response in opposition to Plaintiff's objections was filed by Defendants on June 7, 2013. Plaintiff does not raise any new arguments in his objections that were not raised in his response to the motion for summary judgment.

With respect to the excessive force claim, the only force applied in this case was the handcuffing of Plaintiff during his arrest. According to Plaintiff, the arresting officers used handcuffs that were allegedly too tight, causing Plaintiff to suffer pain and swelling in his arms. To succeed on an excessive force claim, a plaintiff bears the burden of showing (1) an injury (2) which resulted directly and only from the use of force that was excessive to the need; and (3) the

force used was objectively unreasonable. *Rockwell v. Brown*, 664 F.3d 985, 991 (5th Cir. 2011). An arrestee's allegation that handcuffs were too tight, without more, does not constitute an injury necessary to sustain a claim of excessive force. *Locket v. New Orleans City*, 607 F.3d 992, 999 (5th Cir. 2010). In this case, Eisenhour asserts that the officers used three sets of handcuffs linked together in a chain so that the wrists were not pulled so tightly together, which reduced stress on his arms and shoulders. This indicates that the officers took an extra step to avoid injuries to the Plaintiff.

Having made a *de novo* review of the written objections filed by Plaintiff, the Court finds that the findings and conclusions of the Magistrate Judge are correct and the objections are without merit. The Court, therefore, adopts the findings and conclusions of the Magistrate Judge as those of the Court. In light of the foregoing, it is **ORDERED** that the Motion for Summary Judgment (document #23) is **GRANTED**. The claims against Tyler County, Texas, Steven Zeller, Roy James and Michael Rossi Carruth are **DISMISSED** with prejudice.

Accordingly, the only remaining defendant in this case is Lana Stafford (Felps). No appearance has been made by Lana Stafford (Felps) in this case. It is therefore **ORDERED** that Plaintiff shall have 20 days from receipt of this Order to notify the Magistrate Judge how he intends to proceed with his claim against Lana Stafford (Felps).

So **ORDERED** and **SIGNED** this **10** day of **June, 2013**.



Ron Clark, United States District Judge